BOOK REVIEWS.

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MANUAL OF FEDERAL PROCEDURE. By CHARLES C. MONTGOMERY. San Francisco: BANCROFT-WHITNEY CO. 1914. pp. viii, 1057.

"Generally speaking" says the author, "the place of our Federal Courts in our two-fold judicial system—Federal and State—is (1) to give uniformity and national dignity to the determination of Federal or national questions, and (2) to furnish impartial tribunals in cases of diverse citizenship" (p. 2). A special study of Federal procedure is necessary, he says, because, as to suits in equity, we are given "a complete, separate system differing in many vital particulars from state systems", and, with respect to an action at law, "the Federal practitioner must search out those matters wherein the Federal statutes, court rules and decisions have changed the mode of procedure from that in the State Court" (pp. 9-10). With this outline, the work develops into a discussion of the practice in our national courts of law and equity.

A manual it is, and it does not profess to be more. With that standard of its excellence, it bears the test well. It is a very fair summary of a most difficult and perplexing subject; and when in the hands of one who is generally familiar with the workings of the Federal jurisdiction, it will always have a distinct use. The arrangement of subject matter is excellent. This is particularly true in regard to the numerous recent Federal Statutes on various substantive points; so far from being ignored, as might have been expected, they are arranged, as to all questions of procedure for enforcing their provisions, under appropriate headings. A good instance is Section 211, "Jurisdiction under Income Tax Law", and another is Section 212, which refers to arbitration between common carriers and their employees under the Act of July 15, 1913. The different aspects of the appellate jurisdiction of the Supreme Court and of the Circuit Courts of Appeals are well illuminated. Many other excellences there are, and we venture to repeat the commendation of the book for what it purports to be, a summary, and nothing more, and, as a summary, of considerable value to the practitioner who already knows something about the subject.

The book has not yet appeared which does more than give us the practice of the Federal Courts; the philosophy of their being, in its present day lights, is yet to be unfolded. It is an anomolous situation that we have; no other nation has anything like it. The origin of our national judicial system undoubtedly was as stated by the author in the quoted passage with which this review opens, but, like many of the other ideas with which the National Constitution was launched, time has worked such changes that the part originally appointed for the Federal Courts has been greatly altered.

For example, the determination of Federal questions still remains, in the last analysis, for the Supreme Court; but, so far from such cases reaching it by way of appeal from the lower Federal Courts, they may just as well come up from the State tribunals. Thus Chief Justice Marshall decided in *Cohens* v. *Virginia* (1821) 6 Wheat. 264, and since his time the majority of constitutional cases have reached the Supreme Court by that way.

Again, the Federal Courts of first instance were devised to furnish impartial tribunals for non-residents, whether aliens or citizens of other states; but the experience of non-resident litigants in the Federal Courts sitting in some of our Southern states after the Civil War and until comparatively recent days, led many counsel for foreign plaintiffs deliberately to choose the State Courts in such regions as preferable in respect to certain essentials of justice if not of the Byzantine. That unhappy period has disappeared, but it had its use for purposes of illustration.

In the average American state of to-day, the local Federal Court is not apt to be chosen in preference to the State tribunal because of the certainty of finding an impartial judge in the halls of the one rather than of the other. Counsel for the foreign plaintiff is rather more concerned with finding the ablest judge. In this respect, there is no uniform rule in operation; in one State the local Federal bench may rank far above that of the State within whose bounds it sits, and in another State there may be no choice, or indeed the comparison may be in favor of the State courts. More important still in the choice of forum are the considerations that the nature of his case must present to counsel. If the presentation of his proofs will raise a point of evidence on which the Federal doctrine differs from that of the State,—and there are such points—or a question of "general commercial law" on which the Federal rule is at variance with the pronouncement of the State courts, then the practitioner will choose that jurisdiction whose doctrine favors his case as it will develop on the trial.

These instances show how far we have travelled from the ideas of our fathers, who with Eighteenth Century pragmatism gave us a novel institution to subserve one purpose alone. To-day the original purpose is obscured by a thousand chance considerations of daily occurrence, yet we, being people of the common law, have not abolished the institution which long ago lost its *raison d'etre*. If Professor Montgomery will supplement his very practical manual with discussion of the relative place of our national Courts, as distinct from the operations of their machinery, he will have given something to the student as well as to the practitioner.

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THE PROCEDURE AND LAW OF SURROGATES' COURTS OF THE STATE OF NEW YORK. By WILLIS E. HEATON. Third Edition. Albany: MATTHEW BENDER & Co. 1914. pp. Vol. I, cxix, 1025. Vol. II, xliii, 974.

The present edition of this work has been published on account of the passage of Chapter 443, of the Laws of New York, 1914, entitled "An Act to amend the code of civil procedure, in relation to surrogates and the practice and procedure in surrogates' courts", which act is a revision of the entire Chapter XVIII, relating to these topics, and is the result of the report of commissioners, originally constituting a revision committee of the New York State Surrogates' Association; and, apparently made state appointees by a provision in the appropriation law of 1912 (Chap. 547). The author was for a number of years surrogate of Rensselaer county, was the first chairman of the revision commission, and was thereafter special counsel of the commission, and, as he states, was entrusted with the principal part of the work of revision, and of formulating the new practice, and he should, therefore, be qualified to state what changes were proposed to be effected by the